

Assembly Bill No. 593

CHAPTER 833

An act to amend Sections 47000, 47001, 47003, 47004, 47011, 47013, 47020, and 47026 of, to add Sections 47004.1 and 47021 to, to repeal Sections 47014 and 47020 of, and to repeal and add Section 47002 of, the Food and Agricultural Code, and to amend Section 113745 of the Health and Safety Code, relating to agriculture.

[Approved by Governor October 8, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 593, Strom-Martin. Certified farmers' markets.

(1) Existing law authorizes the Secretary of Food and Agriculture to adopt regulations to encourage the direct sale by farmers to consumers of all types of certified agricultural products and noncertifiable agricultural products produced within the state and to establish qualifications for persons selling products directly to consumers if the sales involve the granting of prescribed exemptions by the secretary. Existing law authorizes the secretary to allow certified farmers' markets to establish rules and procedures that are more restrictive than, or do not violate, the provisions of state law relating to certified farmers' markets. Existing law allows any person aggrieved by the implementation of a rule or procedures established by a certified farmers' market to submit a written appeal to the secretary, as specified.

This bill would allow California farmers to transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce would be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market or at a retail stand located at or near the point of production, subject to specified conditions. The bill would authorize certified farmers' markets to establish rules and procedures that are more restrictive than, and do not otherwise violate, provisions of state law relating to certified farmers' markets. The bill would require the governing body of any certified farmers' market operating with more than one participating certified producer to adopt written rules and procedures pertaining to the operation of the market. The bill would require the Department of Food and Agriculture, upon request, to issue an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with applicable state law, as specified. The bill would provide that the department shall not incur liability in connection with the preparation of an advisory opinion. The bill would require the department to provide for an informal

hearing with regard to any grievance of a certified producer involving questions of fact, as prescribed. The bill would also provide for the mediation of disputes, as specified. The bill would prescribe related matters and would delete the appeal provisions.

(2) Existing law, until January 1, 2000, (a) requires the secretary to establish the Certified Farmers' Market Advisory Committee with prescribed membership; (b) authorizes the committee to make recommendations to the secretary on specified matters relating to the regulation of certified farmers' markets; (c) requires the members of the committee to serve without compensation; and (d) prescribes related matters relating to the committee.

This bill would authorize the advisory committee to make recommendations to the secretary regarding the department's budget relating to the regulation of certified farmers' markets and the assessment of fees to pay for costs incurred by the department in undertaking that regulation, as well as alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation. The bill would authorize the department to reimburse the members of the advisory committee for their travel expenses. The bill would delete the January 1, 2000, date, thereby continuing indefinitely those provisions relating to the advisory committee.

(3) Existing law regulates the certification of a farmers' market and a producer by a county agricultural commissioner and authorizes the imposition of a fee by that commissioner to pay for costs incurred in connection with related inspection duties, as prescribed. Existing law, until January 1, 2000, requires each certified producer to pay a state certificate fee of \$10, which is required to be deposited in the Department of Food and Agriculture Fund for use by the department to undertake the regulation of certified farmers' markets, as prescribed.

This bill would authorize the department or a county agricultural commission to deny the renewal of a certified farmers' market certificate or a certified producer's certificate under certain circumstances. The bill, until January 1, 2005, additionally would require every operator of a certified farmers' market to pay to the department, on a quarterly basis, a specified fee. The money generated by the fee would be required to be deposited in the Department of Food and Agriculture Fund, to be used, upon appropriation by the Legislature, to pay for costs incurred by the department in carrying out its duties relating to certified farmers' markets, including specified actions undertaken by the department. Because, under existing law, the failure to pay the required fee would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(4) Existing law, until January 1, 2000, authorizes the secretary and county agricultural commissioners to impose civil penalties, in

accordance with specified procedures, on persons who violate prescribed provisions of law relating to certified farmers' markets.

This bill would extend that date to January 1, 2005.

(5) Existing law makes legislative findings and declarations relating to direct marketing of agricultural products.

The bill would modify those findings and declarations.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 47000 of the Food and Agricultural Code is amended to read:

47000. The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

(a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable prices.

(b) Direct marketing is a good public relations tool for the agricultural industry that brings the farmer face-to-face with consumers.

(c) The marketing potential of a wide variety of California-produced agricultural products should be maximized.

(d) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.

(e) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.

(f) The department should assist producers in organizing certified farmers' markets and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.

(g) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.

SEC. 1.5. Section 47001 of the Food and Agricultural Code is amended to read:

47001. (a) The secretary may adopt regulations to encourage the direct sale by farmers to consumers of all types of California agricultural products.

(b) These regulations may include provisions to ensure and maintain quality and wholesomeness of the products.

SEC. 2. Section 47002 of the Food and Agricultural Code is repealed.

SEC. 3. Section 47002 is added to the Food and Agricultural Code, to read:

47002. California farmers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce shall be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market or at a retail stand located at or near the point of production, subject to the following conditions:

(a) All fresh fruits, nuts, and vegetables sold shall comply with the California Code of Regulations governing maturity and quality.

(b) No exemption granted by this section supersedes the provisions of federal marketing orders, state marketing orders, or any health and safety laws, regulations, or ordinances.

(c) All fresh fruits, nuts, and vegetables sold in closed consumer containers shall be labeled with the name, address, and ZIP Code of the producer, and a declaration of identity and net quantity of the commodity in the package.

SEC. 4. Section 47003 of the Food and Agricultural Code is amended to read:

47003. The secretary may establish qualifications for persons selling products directly to consumers whenever the sales involve the use of any exemption granted by this chapter. Certified farmers' markets and producers' sales outlets, at or near the location of production, may likewise be subject to qualifications.

SEC. 5. Section 47004 of the Food and Agricultural Code is amended to read:

47004. (a) Certified farmers' markets may establish rules and procedures that are more restrictive or do not violate state law or regulation governing or implementing this chapter.

(b) Certified farmers' markets are locations established in accordance with local ordinances, where California farmers may transport and sell to the public California agricultural products that they produced, that are exempt from the established grade, size, labeling, packaging and other such requirements for fruits, nuts, and vegetables, and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(c) The governing body of any certified farmers' market operating with more than one participating certified producer shall adopt written rules and procedures pertaining to the operation of the market. The rules shall include a requirement that the governing body and its designated agents establish, implement, and enforce all rules and procedures pertaining to the operation of the certified farmers' market in a fair, nondiscriminatory, and equitable manner.



SEC. 6. Section 47004.1 is added to the Food and Agricultural Code, to read:

47004.1. (a) Any certified producer aggrieved by a rule or procedure of a certified farmers' market may submit a written request to the department for an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. Not later than 15 calendar days after the date on which the written request is received, the department shall undertake its review and issue an advisory opinion. The request for and issuance of an advisory opinion is not a prerequisite to the pursuit of any civil litigation. However, the advisory opinion shall be given substantial weight in any subsequent civil or administrative proceeding involving the parties and subject matter of the advisory opinion. The department may adopt regulations providing for the precedent value of its advisory opinions issued pursuant to this section. Notwithstanding any other provision of law, the department shall not incur liability in connection with the preparation and issuance of any advisory opinion issued pursuant to this section.

(b) The department shall provide for an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, with regard to any grievance of a certified producer involving questions of fact concerning any action taken by a certified farmers' market against the producer, or any implementation of a rule or procedure established by certified farmers' market against the producer, or any other related issue, as to whether application of the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. The informal hearing shall proceed without the option of conversion to a formal hearing. The request for an informal hearing to resolve issues involving disputes of fact is not a prerequisite to the pursuit of any civil litigation.

(c) In addition to, or in lieu of, the alternatives set forth in subdivisions (a) and (b), the parties may agree to employ mediation. If mediation fails to resolve the dispute, the parties may agree to employ binding arbitration. The department and the county agricultural commissioners shall incur no expense or liability for mediation or binding arbitration.

SEC. 7. Section 47011 of the Food and Agricultural Code is amended to read:

47011. The committee shall be advisory to the secretary on all matters pertaining to direct marketing of agricultural products at certified farmers' markets and may make recommendations including, but not limited to, the following:

(a) The amendment, repeal, or adoption of legislation and regulations that relate to the administration and enforcement of this chapter.

(b) Administrative policies and procedures that relate to the inspection of certified producers and certified farmers' markets.

(c) Administrative civil penalties for violations of direct marketing regulations.

(d) Certification fees collected pursuant to Section 47020.

(e) Statewide review of enforcement actions.

(f) The annual budget of the department to carry out this chapter and the assessment of fees to pay for the costs incurred by the department to carry out this chapter.

(g) Alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation.

SEC. 8. Section 47013 of the Food and Agricultural Code is amended to read:

47013. The members of the committee and any alternate shall serve without compensation, but may be reimbursed by the department for travel expenses incurred in the performance of their duties.

SEC. 9. Section 47014 of the Food and Agricultural Code is repealed.

SEC. 10. Section 47020 of the Food and Agricultural Code, as added by Section 1.5 of Chapter 606 of the Statutes of 1996, effective until January 1, 2000, is amended to read.

47020. (a) A certified farmers' market certificate issued by a county agricultural commissioner shall be valid for 12 months from the date of issue. The county agricultural commissioner shall inspect every certified farmers' market within his or her jurisdiction at least once, in every six months of operation. The county agricultural commissioner may charge a certification and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the certified farmers' market manager prior to the payment of the fee.

(b) A certified producer's certificate issued by a county agricultural commissioner may be valid for up to 12 months from the date of issue. The county agricultural commissioner in each county shall perform at least one annual onsite inspection of the property or properties listed on every certified producer's certificate issued in their county to verify production of the commodities listed on the certificate or the existence in storage of the harvested production, or both. If the certificate is issued for a period of seven months or more, the county agricultural commissioner in each county shall perform

at least one additional onsite inspection or other equally appropriate measure to verify production or storage, or both. The county agricultural commissioner may charge a certificate and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the producer prior to the payment of the fee.

(c) Renewal of a certified farmers' market certificate or certified producer's certificate may be denied by either the department or a county agricultural commissioner if a certified farmers' market or a certified producer is delinquent in the payment of the required state fee or any county certification and inspection fee or administrative civil penalty authorized under this chapter. The certificate shall be eligible for renewal when all outstanding balances and associated penalties or administrative fines have been paid to the department or the respective county or counties.

SEC. 11. Section 47020 of the Food and Agricultural Code, as added by Chapter 606 of the Statutes of 1996, operative January 1, 2000, is repealed.

SEC. 12. Section 47021 is added to the Food and Agricultural Code, to read:

47021. (a) Commencing January 1, 2000, every operator of a certified farmers' market shall remit to the department, within 30 days after the end of each quarter, a fee equal to the number of certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by the department upon the receipt of a budget recommendation from the advisory committee. The fee shall not exceed sixty cents (\$0.60) for each certified producer certificate and other agricultural producers participating on each market day. A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.

(b) Any operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department, to carry out this

chapter, including all of the following actions undertaken by the department:

- (1) The coordination of the advisory committee.
- (2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.
- (3) The adoption of regulations to carry out this chapter.
- (4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.
- (5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.
- (6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.
- (7) The maintenance of a current statewide listing of certified producers.
- (8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.
- (9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 13. Section 47026 of the Food and Agricultural Code is amended to read:

47026. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 14. Section 113745 of the Health and Safety Code is amended to read:

113745. "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code, and the regulations adopted pursuant thereto.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government

Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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